

OVERVIEW OF CURRENT N.J. LAW & REGULATION

(Cable Television)

Unlike most states, New Jersey has had full regulatory authority over cable television companies placed by statute with the Board of Public Utilities (Board) since 1972. Although cable television is not designated as a public utility, much of the state Cable Television Act is patterned after pre-existing public utilities statutes, requiring Board approval for sales, transfers, mergers, encumbrances and issuance of stock and indebtedness. Under the statute, cable companies are distinct from public utilities, and public utility law provisions apply to them only when expressly specified in the state Cable Television Act.

Within the broader purposes and mandate of the state Cable Television Act, the Office of Cable Television (OCTV) provides consumer protection oversight, promotes and coordinates beneficial uses of cable television in schools and communities, helps municipalities through the franchising and renewal processes, protects against discriminatory, preferential, or otherwise unfair practices and promotes dialogue among the industry, municipal officials, and subscribers. The Board also has authority to enforce technical standards, including requirements like grounding and bonding of the distribution plant.

The New Jersey Cable Television Act grants municipalities a significant role in the State's bifurcated cable television franchising process. Prior to

Board approval, cable television companies generally must first obtain a municipal consent ordinance containing the terms and conditions under which they may occupy and use the public rights-of-way. The statutory consent ordinance process is more elaborate than that required for telephone or electric utilities, and covers terms, conditions, and obligations beyond the simple placement of poles and wires. Prior to renewing those consents, municipal governments must also conduct the performance reviews and needs assessments as part of the three year franchise renewal process required under the 1984 federal law.

The New Jersey Cable Television Act also confers broad rate regulation authority upon the Board, but federal pre-emption, to varying degrees, has always limited the scope of rate regulation. Currently, the 1992 federal Cable Television Consumer Protection and Competition Act allows the Board only to regulate basic cable television rates and the equipment associated with such service.

The Board has over two dozen consumer protection regulations which were updated in April, 2000. *See N.J.A.C. 14:18.* The Administrative Code includes specific procedural rules for cable television matters in conjunction with the general procedures governing the Board and the Office of Administrative Law. *See N.J.A.C. 14:17.*

The existing regulations require cable companies which manage the day to day operation of public, educational, and government (PEG) access channels to have written policies concerning their use. The Board has never

imposed minimum statewide standards or requirements for PEG access channels. These needs and requirements are determined by each municipality in the course of the municipal consent process. For municipalities and access entities that have full control over a dedicated channel, these are recommended guidelines.

Regulation and access to poles, trenches, conduits and other rights-of-way for cable television companies are under the jurisdiction of the Board, which has regulations governing such use and the calculation of pole attachment rates. Because New Jersey has certified to FCC that it regulates pole attachments, the FCC does not, in accordance with Section 224 of the federal Communications Act of 1934, have jurisdiction over these matters in New Jersey.

Most disputes among cable television companies, their customers, municipalities, as well as building wiring and access controversies come within the Board's jurisdiction.

Franchised cable systems have a right of access to residential customers, but no power of eminent domain or condemnation. Franchises are not exclusive under state or federal law. Provisions for the company to appeal denials of local zoning approvals, necessary permits, etc. parallel similar provisions governing utilities.

Cable television companies in New Jersey pay 2% of their revenue from basic service directly to the municipalities that franchise them. The following

taxes also apply:

- 1. Six percent Sales and Use tax on retail tangible personal property sold, used, consumed or distributed for use in the State.**
- 2. The 9% New Jersey Business Corporation Tax on the net income of a corporation, or for partnerships, on the partnership income of the partners.**
- 3. An annual assessment by the State to fund the operation of the OCTV, up to a maximum of 2% of the gross operating revenues derived from intrastate operations. The current rate is approximately 0.22%.**

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